under charging him with the offence prescribed therein and if he satisfies the court that he had used all due diligence to carry out the requirements of the nuisance order he should be acquitted of the offence charged; otherwise he should be found guilty of the offence of having failed to comply with the provisions of the relevant nuisance order with respect to the abatement of the nuisance concerned. I would add that, as already pointed out, a criminal summons referring to a charge, was issued and served upon the Respondent, but no copy of such charge can be found in the record of proceedings of the lower court. Solely on this ground, I consider the appeal is misconceived and the proceedings before the lower court were also legally wrong. I therefore set aside such proceedings before the lower court and order that, if the Appellant is still minded to proceed against the Respondent under section 104(12) of the Kuching Municipal Ordinance, the proceedings should be instituted on the basis of this judgment.

This is sufficient to dispose of the appeal which is dismissed for the reason already given. I am, however, asked by learned counsel for the Appellant to give guidance in relation to the making of an application for a nuisance order under section 104(4) of the Kuching Municipal Ordinance. In my view, it would have been of assistance if the legislature had set out procedural provisions in this respect, in the Ordinance, but in their absence, I shall endeavour to accede to learned counsel's request. In my view, what is a "summary" order" under section 104(4) of the Ordinance falls to be considered. In *Jowitt's* Dictionary of English Law (2nd Edition) Page 1719, the meaning of the word "Summary" is given as "an abridgment, a brief compendium; a summary application is one made to a court or judge without the formality of a full proceedings. In procedure, proceedings are said to be summary when they are short and simple in comparison with regular proceedings, that is, in comparison with the proceedings which alone would have been applicable, either in the same or analogous cases, if summary proceedings had not been available. . . . . ". The term "Summary" "is in law used as reference to a mode of dealing with certain matters expeditiously and without ordinary incidental formalities (see *Oxford Dictionary*)": *Dowson* v. *McGrath*[1], per Dwyer, C.J. at page 32.

It should be noted that, by making an application under section 104(4) of the Kuching Municipal Ordinance the applicant is in effect applying to the court for the exercise of a discretionary power to make a summary order. I would express the view that such an application should be given a certain degree of formality and application by letter hardly fulfils this criteria. I consider that it is not beyond the capabilities of the court and the Appellant to devise an acceptable mode of application. In this connection I would direct a copy of this judgment be served upon the Registrar of the High Court for her, in conjunction with the magistrates concerned and the Kuching Municipal Council, to work out such mode of application which would then apply generally.

Having regard to the authorities and the relevant provisions of the Kuching Municipal Ordinance, I am of the further view that the lower court which proceeded on the basis that proceedings relating to the making of a non-summary order should be adopted would appear to be unjustified. To hold otherwise would, in my opinion, mean that the object and intention of the legislature that the nature of the order is that it should be a "summary" one are not given effect to. Further, there is no question of the order made under section 104(4) being rendered "conditional" or "absolute". It need hardly be emphasized that it is up to the court to which a nuisance order is applied for to either make the nuisance order or to refuse it, since it is clear that the powers conferred by that section is a discretionary one. I end with the hope that what I have stated on the procedural aspects of the matter would be of some assistance.

Order accordingly.

Solicitors: *Reddy & Co.; Lo Ming & Co.*

LOW GEOK YEOK v. PUBLIC PROSECUTOR

[A.Cr.J. (Gunn Chit Tuan J.) November 12, 1981]

[Penang – Criminal Appeal No. 78 of 1980]

Dangerous Drugs – Dangerous drug manufacturing – Failure of prosecution to prove custody or control of drug or that accused had manufactured drug – Accused given benefit of doubt – Dangerous Drugs Ordinance 1952, s. 39 B(1) (a) & 39 B(2).

Criminal Law & Procedure – Dangerous drug manufacturing – Whether the appellant had manufactured chandu found on the premises – No proof of custody or control of drug – Accused given benefit of doubt.

The accused appealed against the conviction and sentence of the Sessions Court. He was charged for trafficking in dangerous drugs (manufacturing) of 56 gm. raw opium and 3.5 gm. chandu dross under section 39B (1)(a) of the Dangerous Drugs Ordinance 1952.

The facts revealed that a customs party raided No. 94 MacAlister Lane. In the kitchen they found 2 stoves which were on the fire. On one was an enamel basin containing a dark brown vegetable material which was raw opium and some brownish coloured liquid which was raw opium extract. In the other pot on the fire was a dark viscous liquid which contained 1109 gm. of chandu. A Senior Customs Officer went to the back portion. He saw somebody running into the direction of the bathroom and chased him and found only the appellant in it. He did not see the fire escape and did not know whether the figure had escaped through the fire escape.

Held: (1) the learned President should have acquitted and discharged the appellant at the close of the case for the prosecution which had not made out a *prima facie* case against him;

(2) there was no evidence that the appellant was in exclusive occupation of the kitchen where the 2 stoves were found and therefore he could not be held to be the occupier of it;

(3) the prosecution also did not prove who was in custody or control of the stoves containing the dangerous drug in question and therefore it was not even able to prove who was in possession of the drug in question as the presumption under section 37(a) of the Dangerous Drugs Ordinance 1952 could not be invoked;

(4) the benefit of the doubt should have been given to the appellant. The appeal should be allowed and the conviction quashed accordingly.

Cases referred to:–

(1) *Lim Say Hun* v. *Public Prosecutor* [1950] M.L.J. 116.
(2) *Public Prosecutor* v. *Lai Ah Bee* [1974] 2 M.L.J. 74.
(3) *Phoon Liat Sum* v. *Public Prosecutor* [1950] M.L.J. 205.

CRIMINAL APPEAL.

R. Rajasingam and *S.P. Annamalai* for the appellant.

Hashim Datuk Yusof (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult

Gunn Chit Tuan J.: Low Geok Yeok (the appellant) appealed against conviction and sentence passed on him by the learned President of the Sessions Court, Penang, on October 7, 1980. He was originally charged with his wife, who was acquitted and discharged at the close of the case for the prosecution, and the amended charge against the appellant himself was as follows:–

"That you on 27.2.77 at about 4.30 a.m. at Premises No. 94 MacAlister Lane, Penang did traffic in dangerous drug (manufacturing) on your own behalf, to wit, 1109 grammes of Chandu, 56 grammes of raw opium and 3.5 grammes of Chandu dross and you thereby contravened the provision of paragraph (a) of Sub-section (1) of section 39B of the Dangerous Drugs Ordinance 1952 and committed an offence punishable under sub-section (2) of the same section".

As the offence was alleged to have occurred on 27.2.77, the presumption of trafficking under section 37(da) of the Dangerous Drugs Ordinance, 1952, which was added to the said Ordinance by Act A390 which came into force with effect from 18.3.77, could not be invoked and the prosecution therefore had to prove that the appellant was trafficking in dangerous drugs in the sense that he was, as alleged, manufacturing the chandu which was recovered from the premises in question. However, the evidence adduced by the prosecution showed that a customs party raided premises No. 94 MacAlister Lane at about 4.30 a.m. that day. The main entrance of the house was not locked and the customs party entered the house and went to the kitchen upstairs where they found two stoves which were on the fire. On one was an enamel basin containing a dark brown vegetable material which was raw opium and some brownish coloured liquid which was raw opium extract. In the other pot on the fire was a dark viscous liquid which, according to the chemist, contained 1,109 grammes of chandu.

According to one of the Senior Customs Officer, who was a member of the raiding party, when he went to the back portion he saw somebody running therein. He went after him and found the door of the bathroom locked from inside. He knocked and after identifying himself as a member of the customs party, requested that the door be opened. A man wearing a singlet and shorts then came out and was identified by him to be the appellant. However, under cross-examination the said customs officer stated that he was not aware of an exit downstairs outside the kitchen. He did not see the fire escape because it was too dark. He saw a figure running but did not know whether that figure had escaped through the fire escape. Nevertheless, during re-examination he stated again that he saw a figure going to the left of the kitchen but did not know whether there was a fire escape. He added, however, that he saw a figure going in the direction of the bath room and chased him and found only the appellant in it.

The learned President considered that "the probability that there was someone else who could have escaped was inherently remote, if not, impossible, as the raiding party had taken the precaution of stationing an officer downstairs". Another customs officer who was on guard downstairs at the back portion of the house stated that he did not see anyone running out or leaving the premises by the back.

The appellant was interviewed by and led the customs party to the room of the other accused who was the chief tenant of the premises and who was acquitted and discharged at the close of the case for the prosecution. Subsequently, he also led the customs party to another room which was temporarily occupied by him and another male Chinese called Tan Ah Siong who was then sleeping and who was not called as witness. In the room they found opium smoking utensils. It was also established by the prosecution evidence that there were other tenants in occupation of the other rooms of the said premises.

On the above evidence the learned President found that there was "the inherent probability and a high degree of certainty if not absolute certainty that it was the appellant who was manufacturing i.e. cooking the opium and chandu at 4.30 a.m.". With respect the learned President should have acquitted and discharged the appellant at the close of the case for the prosecution which had not made out a *prima facie* case against him. There was no evidence that the appellant was in exclusive occupation of the kitchen where the two stoves were found and therefore he could not be held to be the occupier of it (see *Lim Say Hun* v. *Public Prosecutor*[1] and *Public Prosecutor* v. *Lai Ah Bee*[2]).

The prosecution also did not prove who was in custody or control of those stoves containing the dangerous drug in question and therefore it was not even able to prove who was in possession of the drug in question as the presumption under section 37(d) of the Dangerous Drugs Ordinance 1952, could not be invoked. Apart from the cheque book and a notebook found in the pocket of the appellant's trousers and from which various inferences could have been drawn, there was no evidence to prove that the accused was manufacturing the said drug at the relevant time.

Finally, the learned President also drew various adverse inferences against the appellant when he could have drawn inferences equally in favour of the appellant on the evidence adduced and recorded by him. (see *Phoon Liat Sum* v. *Public Prosecutor*[3]). The benefit of the doubt should have been given to the appellant and in all the circumstances of this case I therefore allowed the appeal and quashed the conviction.

Appeal allowed.

Solicitors: *R. Rajasingam & Co.; Annamalai & Co.*

LIM LUAN v. SECK TEE HONG

[A.C.J. (Wan Yahya J.) December 14, 1981]
[Malacca – Civil Appeal No. 12 of 1979]

Landlord & Tenant – Rent-controlled premises – Notice to quit – Suitable alternative accommodation must be offered to tenant – Control of Rent Act, 1966, s. 16(1)(m).

Landlord & Tenant – Rent-controlled premises – Notice to quit – No statutory period of notice – Monthly tenancy – One month's notice sufficient – Scope of Control of Rent Act, 1966, s. 16(1)(f).

The appellant was in occupation of a controlled premises at the time of her husband's death. On January 10, 1971 the respondent bought the premises with the intention of starting a restaurant business. On July 10, 1976 he served a Notice to Quit and deliver vacant possession of the premises on August 31, 1976. On January 17, 1977 he proceeded to register a sole proprietorship business naming the unrecovered premises as his principal place of restaurant business. On January 19, 1977 the respondent commenced legal proceedings against the appellant.

The learned magistrate found in favour of the plaintiff because he had found the second ingredient of section 16 (1)(m) of the Control of Rent Act proved. The learned magistrate's judgment was challenged on the grounds relating to questions of proper notice, reasonableness and suitable accommodation.

Held, allowing the appeal: (1) in the absence of any statutory period of notice to be given to the tenant, subject to the rule of reasonableness the normal rules on notice in tenancy matters will apply. In this case, as the tenancy was one of monthly tenancy, a month's notice expiring at the end of the next following month would have been sufficient to terminate the tenancy;

(2) the evidence in this case does not support the conclusion on reasonableness or the availability of suitable alternative accommodation arrived at by the learned magistrate.

Cases referred to:–

(1) *Rajaratnam* v. *Gunn Lay Teik & Anor.* [1961] M.L.J. 199.
(2) *Thompson* v. *Rolls* [1926] 2 K.B. 426.
(3) *Hardial Singh & Ors.* v. *Malayan Theatres Ltd.* [1953] M.L.J. 180, 183.
(4) *Dixon* v. *Tommis & Anor.* [1952] 1 All E.R. 725.
(5) *Parmee* v. *Mitchell* [1950] 1 All E.R. 872.
(6) *Cumming* v. *Danson* (1942) 112 L.J.K.B. 145, 147.

CIVIL APPEAL.

R. Krishnan for the appellant.
Thara Singh Sidhu for the respondent.

Cur. Adv. Vult.